

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1015 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HIRJIBHAI MULJIBHAI JAVIA

Versus

DINUBHAI KALARIA

Appearance:

MR HJ NANAVATI for Petitioners

NOTICE SERVED for Respondent No. 1, 3, 4, 5, 6, 7, 8, 9,10

GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/08/98

ORAL JUDGEMENT

This revision under Section 115 of the Code of Civil Procedure is pending since about 5 years but nobody is interested from the side of the revisionist to press this revision. The list has been revised thrice, but none appears for the revisionist. The Learned AGP was heard on behalf of respondent no.2. The impugned order has been examined. The brief facts are that the

revisionists claiming to be trustees of Pael Kelwani Mandal submitted a change report before Assistant Charity Commissioner, Junagadh under Section 22 of the Bombay Public Trust Act, 1950. The said change report was approved by the Assistant Charity Commissioner. An appeal was preferred against the order of the Assistant Charity Commissioner which was allowed by the Joint Charity Commissioner. The order of the Assistant Charity Commissioner was set aside. The Revisionist feeling aggrieved from the order of the Joint Charity Commissioner filed Misc. Civil Application No. 43 of 1990 in the District Court of Junagadh under Section 72 of the Bombay Public Trust Act. Interim stay was also applied for in the said Misc. Civil Application but the Assistant District Judge, Junagadh refused to grant any interim stay. An appeal from order of the Assistant District Judge refusing to grant interim stay was filed in this court. The interim stay was granted by this Court and when the appeal against order was taken up for final hearing, this court disposed of the said appeal no.2171 of 1990 by directing the Assistant District Judge to decide the main matter expeditiously preferably before 31st August, 1993. When the matter was ripe for final hearing before the Assistant District Judge, Junagadh an application purporting to be written and signed by the applicants and the opposite part no.1 was filed before the Assistant District Judge, Junagadh praying that since the matter was settled amicably the appeal may be decided in terms thereof and the change report accepted by the Assistant Charity Commissioner may be restored. It appears from the record that before the said application could be disposed of another application was moved by opposite party no.10 for being impleaded as a party to the appeal. This application was granted by the appellate Court and opposite party no.10 was brought on record as such. He was not a signatory to the so-called compromise between the revisionist and the opposite party no.1. The Appellate Court refused to act upon the said compromise. It is against this order that the instant revision is directed.

2. The Lower Appellate Court has rightly observed that the proceedings before the Joint Charity Commissioner or Assistant Charity Commissioner cannot be called as a suit within the meaning of Order 23 Rule 3 CPC. Hence the appeal could not be decided in terms of the so-called compromise and since validity of the orders passed by the Assistant Charity Commissioner and Joint Charity Commissioner were in question the order of the Assistant Charity Commissioner could not be restored under such compromise. Another reasoning of the Lower

Appellate Court was that the opposite party no.10 was also brought on record. Hence also the compromise could not be acted upon. The Lower Appellate Court has not specifically observed in the impugned order that the opposite party no.10 is not a signatory to the compromise.

3. After examining the impugned order I find that no jurisdictional order is involved in it. Hence the revisional jurisdiction under Section 115 CPC should not be exercised. Order 23 Rule 3 CPC is definitely confined to a suit. The appeal is no doubt continuation of suit but proceedings before the Assistant Charity Commissioner or Joint Charity Commissioner cannot be equated with suit which is contemplated under Order 23 Rule 3 CPC. If this is so then the Lower Appellate Court acted well within its jurisdiction in refusing to act upon the compromise.

4. It may also be mentioned that order 23 Rule 3 CPC even if expanded to breakable limits cannot permit a Court to act upon the compromise which is not signed by all the parties thereto. It is mandatory under Order 23 Rule 3 CPC that such agreement or compromise must be in writing and signed by the parties. The compromise in question cannot be said to be a compromise in writing signed by the opposite party no.10. If this so, then also the Lower Appellate court was justified in refusing to act upon such compromise.

5. For the reasons given above it can safely be said that the impugned order does not suffer from any jurisdictional order, illegality or material irregularity. The revision has thus no merit and is liable to be dismissed. The revision is accordingly dismissed of. No order as to costs.

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